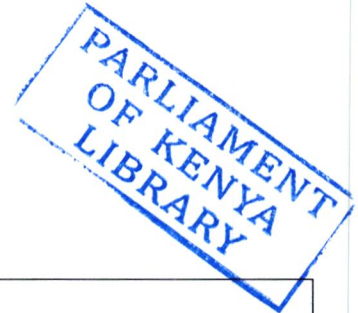


Approved for tabling in the House.

5/10/2021
SNA



REPUBLIC OF KENYA
NATIONAL ASSEMBLY



TWELFTH PARLIAMENT – FIFTH SESSION
DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON
THE REFUGEE BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2019)

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 05 OCT 2021

DAY

TUESDAY

TABLED
BY:

CHAIR DC - ADMINISTRATION &
NATIONAL SECURITY
HON. PETER MUKATHI, MP

CLERK-AT
THE-TABLE:

Benson Inzofu

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2021

TABLE OF CONTENTS

LIST OF ANNEXURES 3

CHAIRPERSON’S FOREWORD 4

1.0 PREFACE..... 5

 1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE 5

 1.2 Mandate of the Committee 5

 1.3 Composition of the Committee 6

 1.4 Committee Secretariat..... 7

2.0 THE PRESIDENT’S RESERVATIONS TO THE REFUGEES BILL (*NATIONAL ASSEMBLY BILL NO. 62 OF 2019*)..... 8

4. COMMITTEE RECOMMENDATION 13

LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on consideration and adoption of the report
- Annexure 2:** Signed list of Members who attended the sitting which considered and adopted the report
- Annexure 3:** Presidential Memorandum on the Bill

CHAIRPERSON'S FOREWORD

The Refugees Bill, 2019 (*National Assembly Bill No. 62 of 2019*) was passed by the National Assembly on **Tuesday, 2nd March, 2021**. The Bill sought to provide for the recognition, protection and management of refugees; to give effect to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

In line with the powers conferred by Article 115 of the Constitution, H.E. the President expressed reservation to assent to the Refugee's Bill. Consequently, the Memorandum was sent to the National Assembly on **11th August, 2021** detailing the reasons for reservations. In the memorandum, the President expressed reservations on Clauses (2), (8), (18), (28) and (31) of the Bill.

Through a communication dated **Wednesday, September 1, 2021**, the Speaker conveyed the President's Memorandum on the Bill and subsequently referred it to the Departmental Committee on Administration and National Security for consideration and report to the House. In line with the Speaker's Communication, the Committee considered the President's Memorandum in a meeting held on **Friday, 24th September, 2021**. The deliberations formed the basis on which the committee made its decision and accordingly adopted its report on the same on **Friday, 24th September, 2021**.

The Committee thanks the Offices of the Speaker and the Clerk of the National Assembly for the technical support extended to it in the process of considering the President's reservations to the Refugees Bill (*N.A. Bill No.62 of 2019*). In addition, I thank Committee Members and the secretariat for their sacrifice and commitment to duty which made consideration of the memorandum and report to the House successful.

Hon. Speaker, the Committee having considered the President's Memorandum and recommendations herein **AGREES TO** the President's recommendation that Clause 2, Clause 8, Clause 18, Clause 28 and Clause 31 of the Bill be amended in the manner as proposed in the Presidential Reservations to the Refugee Bill, No. 69 of 2019.

HON. PETER MWATHI, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY**

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Hon. Speaker,

1.2 Mandate of the Committee

1. The Departmental Committee on Administration and National Security is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is –
 - (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - (b) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - (f) *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments) ;*
 - (g) *examine treaties, agreements and conventions;*
 - (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - (j) *examine any questions raised by Members on matters within its mandate.*
2. The subjects under the Committee's jurisdiction are; national security, police services, home affairs, public administration, public service, prisons, management of natural disasters and community service orders.

1.3 Composition of the Committee

3. The Committee was constituted on 14th December, 2017 and as at the time of considering the Petition and compiling this report comprised the following Members-

Chairperson

Hon. Peter Mwathi, MP
Limuru Constituency

Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, MP
Wajir County

Jubilee Party

Hon. Jeremiah Lomurukai, MP
Loima Constituency
ODM Party

Hon. (Dr.) Tecla Tum, MP
Nandi County
Jubilee Party

Hon. Kaluma, George Peter, MP
Homa Bay Town Constituency
ODM Party

Hon. Josphat Kabinga, MP
Mwea Constituency
Jubilee Party

Hon. (Dr.) Makali Mulu, MP
Kitui Central Constituency
Wiper Party

Hon. Nimrod Mbai, MP
Kitui East Constituency
Jubilee Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency
Jubilee Party

Hon. Peter Masara, MP
Suna West Constituency
Independent Party

Hon. Aduma Owuor, MP
Nyakach Constituency
ODM Party

Hon. Abdi Shurie, MP
Balambala Constituency
Jubilee Party

Hon. Swarup Mishra, MP
Kesses Constituency
Jubilee Party

Hon. Halima Mucheke, MP
Nominated Member
Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP
Mbeere South Constituency
Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency
ANC Party

Hon. Arbelle, Marselino Malimo, MP
Laisamis Constituency
Jubilee Party

Hon. Rozaah Buyu, MP
Kisumu County
ODM Party

Hon. William Kamuren Chepkut, M.P.
Ainabkoi Constituency
Independent Party

1.4 Committee Secretariat

4. The Committee Secretariat comprises the following staff-

Mr. Adan Gindicha
Senior Clerk Assistant
Head of Secretariat

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigitta Mati
Legal Counsel

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Josphat Bundotich
Serjeant-at-Arms

Ms. Eva Kaare
Serjeant-at-Arms

Mr. Yakub Ahmed,
Media Officer

Rodgers Kilungya
Audio Recording Officer

Delvin Onyancha
Researcher/ Policy Analyst

2.0 THE PRESIDENT'S RESERVATIONS TO THE REFUGEES BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2019)

5. In his Memorandum, the President stated as follows-

A. CLAUSE 2

Clause 2 of the Bill proposes to insert the definition of "transit centre". In his view, the proposed definition does not take into account that a transit centre may also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre. The effect of the omission is that the proposed definition is in conflict with sections 4 and 12 (3) (g) of the Persons Deprived of Liberty Act, 2014, which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance.

If the proposed definition is enacted in its current form, this may lead to a situation where the Government may be compelled to build parallel facilities for the housing of refugees rather than investing in the improvement of the capacity of existing centres which can serve the same purpose.

President's reservation

That clause 2 of the Bill be amended, in the definition of "transit centre", by adding the words "and includes a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre" after the words "security screening".

Implication of the proposed reservation

The proposed reservation seeks to state explicitly such designated areas. They may include prisons, immigration detention centres, police stations, remand homes among others.

Committee Observations

The Committee observed as follows—

- (a) The reservation seeks to explicitly provide what may constitute a designated area;
- (b) Section 4 of the Persons Deprived of Liberty Act, 2014 which provides that "the right to privacy set out in Article 31 of the Constitution, may be limited in respect of a person deprived of liberty where there is need for humanitarian assistance of migrants, refugees, asylum or refugees status seekers, stateless and undocumented persons buttresses the definition of areas that may be designated as transit centres. This can be inferred from the words "means areas designated by the Cabinet Secretary for the purposes". This in effect means that the Cabinet Secretary can designate any area to be a transit centre for the purposes of temporarily accommodating persons under the Act;
- (c) Section 12(3) (g) (Right to reasonable accommodation) states that "Every Competent Authority shall ensure that refugees, asylum seekers or refugee status seekers are held separately from persons charged with or convicted of criminal offences" is not in conflict with clause 2 of the Bill.
The provision enhances the definition of transit centre to mean that in such designated areas, there is need to hold refugees separately from persons who are charged or convicted criminals;
- (d) There is need to dispel any ambiguity as to what a transit centre is. Therefore, by explicitly providing examples of such transit centre does dismiss the notion that the government is or may be compelled to build parallel facilities for housing of refugees

Committee Recommendation

The Committee agreed with the reservation to clause 2.

Justification

To dispel any ambiguity on what constitutes a transit centre.

B. CLAUSE 8

Clause 8 of the Bill fails to include a provision empowering the Commissioner to promote, in as far as is possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes. He further noted that the effect of the failure is that it leaves room for the importation of goods that would otherwise be locally available thereby failing to benefit the local economy.

Presidents Reservation

That clause 8 of the Bill be amended in sub-clause (2) by adding the following new paragraph immediately after paragraph (w)—

“(x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.”

Implication of the Proposed Reservation

The reservation seeks to task the Commissioner for Refugee Affairs to encourage through guidelines procurement or purchase of local products and services in support of refugee programmes. This means that refugee agencies will source goods and services from local contractors and this may boost the economy.

Committee Observations

The Committee observed that the reservation—

- (a) seeks to promote positive and sustainable partnerships between the host communities and refugees;
- (b) seeks to facilitate growth and development in areas designated as refugees camps and their environs

Committee Recommendation

The Committee agreed with the reservation to clause 8.

Justification

To task the Commissioner for Refugee Affairs to promote procurement or purchase of local products and services in support of refugee programmes. This will enhance growth and development in designated areas and the country at large.

C. CLAUSE 18

Clause 18 of the Bill provides that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. The clause, when read together with clause 17 of the Bill, causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status. Furthermore, the

manner in which the clause is drafted suggests that the revocation is only in relation to facts that emerge after recognition which is in contravention of the provisions of Article I(F) of the 1951 United Nations Convention Relating to the Status of Refugees.

Presidents Reservation

That clause 18 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)—

(4A) The provisions of section 17 (2), (3), (4) and (5) shall, with the necessary modifications, apply to the revocation of refugee status by the Commissioner.

Implication of the Proposed Reservation

The proposed reservation seeks to explicitly provide for the procedure to be adopted by the Commissioner for refugees before revoking a refugee status.

Committee Observations

The Committee observed that —

- (a) the proposed reservation seeks to explicitly provide for the procedure to be adopted by the Commissioner before he or she revokes the refugee status of a person;
- (b) Cancellation of a refugee status is solely for persons who have misrepresented themselves or omitted material facts which if known could have changed the decision on recognition while revocation relates to when a refugee has committed a war crime or a crime against humanity;
- (c) Revocation of refugee status in this case is for persons who have been recognized as refugees. In the case of asylum seekers, clause 4 of the Bill provides for exclusion and disqualification from refugee status, where persons are believed to have committed a crime against peace, a war crime or a crime against humanity;
- (d) Decisions of the Commissioner may be appealed to the Refugee Status Appeals Committee.

Committee Recommendation

The Committee agreed with the reservation to clause 18.

Justification

To provide for the procedure to be adopted by the Commissioner for refugees before revoking a refugee status.

D. CLAUSE 28

Clause 28 of the Bill, which provides for the rights and obligations of refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits. The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to protracted refugee situations.

Presidents Reservation

That clause 28 of the Bill be amended by adding the following new sub-clause immediately after sub-clause (7)—

(8) A person from a Partner State of the East African Community who has been recognized as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the Establishment of the East African Community Common Market, and any other relevant written law.

Implication of the Proposed Reservation

The proposed reservation seeks to enhance the rights of refugees in Kenya by affording better avenues such as work permits in enjoying and exercising the right to work among others

Committee Observations

The Committee observed that—

- (a) The reservation seeks to afford more rights to refugees;
- (b) Article 124(5)(h) of the EAC Treaty, Partner States agreed to establish common mechanisms for management of refugees;
- (c) Article 5 of the Protocol for Establishment of the East African Community Common Market provides for the scope of the protocol in the implementation of the Common Market and strategies for realization of the rights and freedoms of citizens; ease of cross border movement of persons and adaption of integrated border management; removal of restrictions on movement of labor; services and the right of establishment and residence;

Committee Recommendation

The Committee agreed with the reservation to clause 28.

Justification

To enhance the rights of refugees in Kenya by affording better avenues such as work permits in enjoying and exercising the right to work among others.

E. CLAUSE 31

Clause 31 of the Bill, which provides that refugees shall reside in designated areas, authorizes the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. The clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

Presidents Reservation

That clauses 31 of the Bill be amended by adding the following new sub clause immediately after sub clause (4)—

(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.

Implication of the Proposed Reservation

The proposed reservation seeks to provide for a transition mechanism for persons who are refugees and are residing in an area that is not a designated area.

Committee Observations

The Committee observed that—

- (a) There is need to provide for persons who are refugees and are not residing in a designated area;
- (b) The reservation will enhance transparency and reporting of the situation of refugees in the country;

Committee Recommendation

The Committee agreed with the reservation to clause 31.

Justification

To provide for a transition mechanism for persons who are refugees and are residing in an area that is not a designated area to another area.

4. COMMITTEE RECOMMENDATION


6. The Committee having considered the President's reservations to the Refugees Bill, 2019 and pursuant to the provisions of Article 115 of the Constitution, recommends that the House **AGREES WITH** the President's recommendation on Clause 2, Clause 8, Clause 18, Clause 28 and Clause 31 of the Refugees Bill (No. 62 of 2019).

SIGNED..........DATE.....5th . 10 . 2021.....

HON. PETER MWATHI, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

 THE NATIONAL ASSEMBLY PAPERS LAID			
DATE: 05 OCT 2021			
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**MINUTES OF THE 31ST SITTING OF THE DEPARTMENTAL
COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY
HELD ON FRIDAY, 24TH SEPTEMBER, 2021 AT 2.00 P.M. AT SERENA
BEACH HOTEL, MOMBASA**

PRESENT-

1. Hon. Peter Mwathi, MP *Chairperson*
2. Hon. Dr. Makali Mulu, MP
3. Hon. Aduma Owuor, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Peter Masara, MP
7. Hon. Oku Kaunya, MP
8. Hon. Marselino Arbelle, MP
9. Hon. Col (Rtd) Geoffrey King'ang'i, MP
10. Hon. Jeremiah Ekamais Lomurukai, MP

ABSENT WITH APOLOGIES

1. Hon. Fatuma Gedi, CBS, MP *Vice chairperson*
2. Hon. Halima Mucheke, MP
3. Hon. Nimrod Mbithuka Mbai, MP
4. Hon. Ngunjiri Wambugu, MP
5. Hon. Abdi Omar Shurie, MP
6. Hon. William Kamuren Chirchir Chepkut, MP
7. Hon. Swarup Mishra, MP
8. Hon. Rozaah Buyu, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. John Mutega - Deputy Director
2. Mr. Adan Gindicha - Senior Clerk Assistant
3. Mr. Joshua Ondari - Clerk Assistant
4. Ms. Delvin Onyancha - Research Assistant Officer
5. Ms. Brigitta Mati - Legal Counsel

6. Mr. Josphat Bundotich

- Serjeant-At-Arms

MIN No. 125 /2021:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson officially welcomed Members to the meeting at 2.00 pm with a word of prayer.

MIN No. 126 /2021:-

**ADOPTION OF THE REPORT ON THE
FACT-FINDING VISIT TO MAKIMA WARD
MBEERE SOUTH SUB-COUNTY
REGARDING FORCEFUL EVICTIONS OF
RESIDENTS OF NDUNGUINI IN MAKIMA
WARD OF MBEERE SOUTH
CONSTITUENCY**

The Committee considered the report and came up with the following observations and recommendations:-

Observations

- a) The survey of the Masinga land was done between 1973 and 1979 through acquisition of land by the Government for dam construction and agricultural activities. The land was acquired through Compulsory acquisition. This was done through community compensation program for those affected. *This could be supported by various records of gazette notices showing into details persons who were affected and compensated.*
- b) TARDA is in possession of the Title deeds to the land in dispute. The Tittles are for LR No. 28670(6,768 Ha), LR 28671(10,217 Ha), and LR No.12621 (13,241 Ha).
- c) The removal of settlers/settlements that happened in Masinga and Kiambere was a legal exercise in bid to safeguard the buffer zone of the two dams. Following the end of the Court matter vide ELC No. 148 of 2017- TARDA verses Joseph Muli Mukuluta and twenty six others, *the court decided the matter in favor of the Authority on the 12th March 2021.* The squatters were

given a grace period of thirty days (30) from the date of restoration of beacons by TARDA to vacate the suit properties.

- d) According to the Evidence presented, there exists a disparity in the number of people alleged to have settled in the buffer zones of Masinga and Kiambere dams.

Recommendation

THAT, the Court having made a determination on the matter in ELC.No.148 Of 2017(TARDA vs. Joseph Muli Mukuluta), aggrieved parties should pursue the available appellate mechanisms.

The report was adopted after being proposed by Hon. Jeremiah Ekamais Lomurukai, MP and seconded by Hon. Marselino Arbelle, MP.

MIN No. 127 /2021:-

**REPORT ON THE CONSIDERATION OF
THE PRESIDENT'S MEMORANDUM ON
THE REFUGEE BILL (NATIONAL
ASSEMBLY BILLS NO. 62 OF 2019)**

The Committee considered the report and came up with the following observations and recommendations:-

Observations-

A. CLAUSE 2

Clause 2 of the Bill proposes to insert the definition of “transit centre”. In his view, the proposed definition does not take into account that a transit centre may also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre. The effect of the omission is that the proposed definition is in conflict with sections 4 and 12 (3) (g) of the Persons Deprived of Liberty Act, 2014, which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance.

If the proposed definition is enacted in its current form, this may lead to a situation where the Government may be compelled to build parallel facilities for the housing

of refugees rather than investing in the improvement of the capacity of existing centres which can serve the same purpose.

President's reservation

That clause 2 of the Bill be amended, in the definition of "transit centre", by adding the words "and includes a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre" after the words "security screening".

Implication of the proposed reservation

The proposed reservation seeks to state explicitly such designated areas. They may include prisons, immigration detention centres, police stations, remand homes among others.

Committee Observations

The Committee observed as follows—

- (a) The reservation seeks to explicitly provide what may constitute a designated area;
- (b) Section 4 of the Persons Deprived of Liberty Act, 2014 which provides that “the right to privacy set out in Article 31 of the Constitution, may be limited in respect of a person deprived of liberty where there is need for humanitarian assistance of migrants, refugees, asylum or refugees status seekers, stateless and undocumented persons buttresses the definition of areas that may be designated as transit centres. This can be inferred from the words “means areas designated by the Cabinet Secretary for the purposes”. This in effect means that the Cabinet Secretary can designate any area to be a transit centre for the purposes of temporarily accommodating persons under the Act;
- (c) Section 12(3) (g) (Right to reasonable accommodation) states that “Every Competent Authority shall ensure that refugees, asylum seekers or refugee status seekers are held separately from persons charged with or convicted of criminal offences” is not in conflict with clause 2 of the Bill.

The provision enhances the definition of transit centre to mean that in such designated areas, there is need to hold refugees separately from persons who are charged or convicted criminals;

- (d) There is need to dispel any ambiguity as to what a transit centre is. Therefore, by explicitly providing examples of such transit centre does dismiss the notion that the government is or may be compelled to build parallel facilities for housing of refugees

Committee Recommendation

The Committee agreed with the reservation to clause 2.

Justification

To dispel any ambiguity on what constitutes a transit centre.

B. CLAUSE 8

Clause 8 of the Bill fails to include a provision empowering the Commissioner to promote, in as far as is possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes. He further noted that the effect of the failure is that it leaves room for the importation of goods that would otherwise be locally available thereby failing to benefit the local economy.

Presidents Reservation

That clause 8 of the Bill be amended in subclause (2) by adding the following new paragraph immediately after paragraph (w)—

“(x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.”

Implication of the Proposed Reservation

The reservation seeks to task the Commissioner for Refugee Affairs to encourage through guidelines procurement or purchase of local products and services in support of refugee programmes. This means that refugee agencies will source goods and services from local contractors and this may boost the economy.

Committee Observations

The Committee observed that the reservation—

- (a) seeks to promote positive and sustainable partnerships between the host communities and refugees;
- (b) seeks to facilitate growth and development in areas designated as refugees camps and their environs

Committee Recommendation

The Committee agreed with the reservation to clause 8.

Justification

To task the Commissioner for Refugee Affairs to promote procurement or purchase of local products and services in support of refugee programmes. This will enhance growth and development in designated areas and the country at large.

C. CLAUSE 18

Clause 18 of the Bill provides that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. The clause, when read together with clause 17 of the Bill, causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status. Furthermore, the manner in which the clause is drafted suggests that the revocation is only in relation to facts that emerge after recognition which is in contravention of the provisions of Article I(F) of the 1951 United Nations Convention Relating to the Status of Refugees.

Presidents Reservation

That clause 18 of the Bill be amended by inserting the following new subclause immediately after subclause (4)—

(4A) The provisions of section 17 (2), (3), (4) and (5) shall, with the necessary modifications, apply to the revocation of refugee status by the Commissioner.

Implication of the Proposed Reservation

The proposed reservation seeks to explicitly provide for the procedure to be adopted by the Commissioner for refugees before revoking a refugee status.

Committee Observations

The Committee observed that —

- (a) the proposed reservation seeks to explicitly provide for the procedure to be adopted by the Commissioner before he or she revokes the refugee status of a person;
- (b) Cancellation of a refugee status is solely for persons who have misrepresented themselves or omitted material facts which if known could have changed the decision on recognition while revocation relates to when a refugee has committed a war crime or a crime against humanity;
- (c) Revocation of refugee status in this case is for persons who have been recognized as refugees. In the case of asylum seekers, clause 4 of the Bill provides for exclusion and disqualification from refugee status, where persons are believed to have committed a crime against peace, a war crime or a crime against humanity;
- (d) Decisions of the Commissioner may be appealed to the Refugee Status Appeals Committee.

Committee Recommendation

The Committee agreed with the reservation to clause 18.

Justification

To provide for the procedure to be adopted by the Commissioner for refugees before revoking a refugee status.

D. CLAUSE 28

Clause 28 of the Bill, which provides for the rights and obligations of refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits. The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to protracted refugee situations.

Presidents Reservation

That clause 28 of the Bill be amended by adding the following new subclause immediately after subclause (7)—

(8) A person from a Partner State of the East African Community who has been recognised as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the Establishment of the East African Community Common Market, and any other relevant written law.

Implication of the Proposed Reservation

The proposed reservation seeks to enhance the rights of refugees in Kenya by affording better avenues such as work permits in enjoying and exercising the right to work among others

Committee Observations

The Committee observed that—

- (a) The reservation seeks to afford more rights to refugees;
- (b) Article 124(5)(h) of the EAC Treaty, Partner States agreed to establish common mechanisms for management of refugees;
- (c) Article 5 of the Protocol for Establishment of the East African Community Common Market provides for the scope of the protocol in the implementation of the Common Market and strategies for realisation of the

rights and freedoms of citizens; ease of cross border movement of persons and adaption of integrated border management; removal of restrictions on movement of labor; services and the right of establishment and residence;

Committee Recommendation

The Committee agreed with the reservation to clause 28.

Justification

To enhance the rights of refugees in Kenya by affording better avenues such as work permits in enjoying and exercising the right to work among others.

E. CLAUSE 31

Clause 31 of the Bill, which provides that refugees shall reside in designated areas, authorises the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. The clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

Presidents Reservation

That clauses 31 of the Bill be amended by adding the following new sub clause immediately after sub clause (4)—

(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.

Implication of the Proposed Reservation

The proposed reservation seeks to provide for a transition mechanism for persons who are refugees and are residing in an area that is not a designated area.

Committee Observations

The Committee observed that—

- (a) There is need to provide for persons who are refugees and are not residing in a designated area;
- (b) The reservation will enhance transparency and reporting of the situation of refugees in the country;

Committee Recommendation

The Committee agreed with the reservation to clause 31.

Justification

To provide for a transition mechanism for persons who are refugees and are residing in an area that is not a designated area to another area.

Recommendations-

The Committee having considered the President’s reservations to the Refugees Bill, 2019 and pursuant to the provisions of Article 115 of the Constitution, recommends that the House AGREES WITH the President’s recommendation on Clause 2, Clause 8, Clause 18, Clause 28 and Clause 31 of the Refugees Bill (No. 62 of 2019).

The report was adopted after being proposed by Hon. Peter George Kaluma, MP and seconded by Hon. Oku Kaunya, MP.

MIN No. 128 /2021:-

ADJOURNMENT

The Chairperson adjourned the sitting at six O’clock.

Signed.....

Chairperson

Date.....

5th, 10. 2021

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY


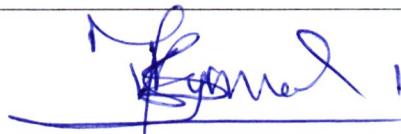

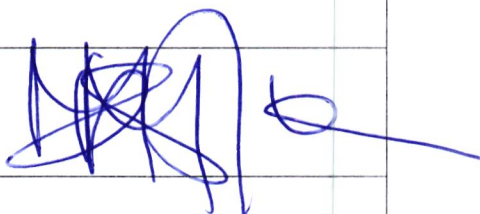
ATTENDANCE SCHEDULE

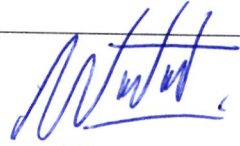

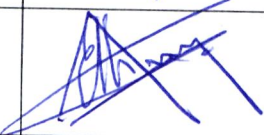

DATE: 24/09/2021

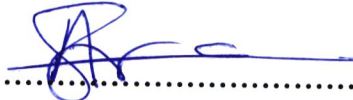
TIME: 2.00 pm

VENUE: Serena Beach Hotel, Njumbura

AGENDA: Adoption of the Report on the Consideration of the President's Memorandum on the Refugee Bill (National Assembly Bill No. 62 of 2017)

NO.	NAME	SIGNATURE
1.	Hon. Peter Mwathi, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	
7.	Hon. Halima Mucheke, MP	
8.	Hon. Marselino Malimo Arbelle, MP	
9.	Hon. Nimrod Mbithuka Mbai, MP	

10.	Hon. Ngunjiri Wambugu, MP	
11.	Hon. Abdi Omar Shurie, MP	
12.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
13.	Hon. Peter Masara, MP	
14.	Hon. Oku Kaunya, MP	
15.	Hon. Rozaah Buyu, MP	
16.	Hon. Jeremiah Lomurukai, MP	
17.	Hon. William Chepkut, MP	
18.	Hon. Swarup Mishra, MP	

Signed..........Date.....24/09/2021.....
Adan Gindicha,
Senior Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed.....Date.....
Peter Chemweno,
Director, Directorate of Departmental Committee Services



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

____ (No. 007 of 2021) ____

REFERRAL BY H.E. THE PRESIDENT OF THE REFUGEES BILL 2019

Honourable Members,

You may recall that the National Assembly passed the **Refugee Bill (National Assembly Bill No. 62 of 2019)**. The Bill was sponsored by the Leader of the Majority Party. Following its passage, I did present the Bill for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1) (b) of the Constitution, H.E. the President, by way of a Memorandum dated 11th August, 2021, has referred the Bill back to the National Assembly for reconsideration.

Honourable Members, in his Memorandum, H.E. the President has expressed reservations on following clauses of the Bill-

- 1) Clause 2 of the Bill,** which defines the term, "transit centre". H.E. the President recommends that the definition of "transit centre" be amended to also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre.

Amongst the reasons for his reservations, H.E. the President notes that the effect of the omission of the proposed definition is in conflict with section 4 and 12(3)(g) of the Persons Deprived of Liberty Act of 2014 which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance.

2) Clause 8 of the Bill, which provides for the establishment and functions of the Commissioner for Refugee Affairs. H.E. the President observes that the proposal does not provide for the empowerment of the Commissioner for Refugee Affairs to promote, in as far as possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes. This leaves room for importation of goods that would otherwise be locally available therefore failing to benefit the local economy.

3) Clause 18 of the Bill, which proposes that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. In his reservations, H. E. the President observes that the clause when read together with clause 17 of the Bill causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status.

4) Clause 28 of the Bill, which provides for Rights of and obligations of Refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit

The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to the protracted refugee situations.

5) Clause 31 of the Bill, which provides for the requirement for refugees to reside in designated areas, authorizes the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. H.E the President observes that the clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

Honourable Members, having made his reservations which are explained in more detail in his Memorandum to the House, H.E. the President now requests the National Assembly to reconsider the Bill in accordance with the provisions of Article 115(2) (a) of the Constitution.


Honourable Members, Standing Order 154(2) of the National Assembly Standing Orders requires the House to consider the President's Reservations **within twenty one (21) days** of the date when the House next meets upon receipt of the Memorandum. In this regard, H.E the President's Reservations, as contained in his Memorandum, now stand committed to the Departmental Committee on Administration and National Security for consideration. The Committee should table its report soonest to allow the House to consider the President's Reservations within the set timelines.

Honourable Members, may I at this early stage, remind the House of the *Speaker's Communication* of July 28, 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is **a simple majority** as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of a total override of the President's reservations, including negating his proposed text, would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

Honourable Members, I wish to further remind the House and the Committee that only **Clauses (2), (8), (18), (28) and (31) of the Bill** will be considered. I therefore direct the Clerk to circulate the Memorandum of H.E. the President to all Members so that they familiarize themselves with its contents.

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, September 01, 2021



THE CONSTITUTION OF KENYA

REFERRAL OF THE REFUGEES BILL, 2019 FOR RECONSIDERATION BY THE NATIONAL ASSEMBLY

MEMORANDUM

By His Excellency the Honourable Uhuru
Kenyatta, President and Commander-in-Chief
of the Kenya Defence Forces.

Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled “An Act of Parliament to provide for the recognition, protection and management of refugees; to give effect to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa and for connected purposes”, the short title of which is “The Refugees Bill, 2019” was passed by the National Assembly on the 2nd March, 2021;



AND WHEREAS the Refugees Bill, 2019, was presented to me for assent in accordance with the provisions of the Constitution, on the 5th August, 2021;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Refugees Bill, 2019, for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill proposes to insert the definition of “transit centre”. The proposed definition does not take into account that a transit centre may also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre.

The effect of this omission is that the proposed definition is in conflict with sections 4 and 12(3)(g) of the Persons Deprived of Liberty Act, 2014, which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance. If the proposed definition is enacted in its current form, this may lead to a situation where the Government may be compelled to build parallel facilities for the housing of refugees rather than investing in the improvement of the capacity of existing centres which can serve the same purpose.



RECOMMENDATION:

In view of the foregoing, I recommend that clause 2 of the Bill be amended, in the definition of “transit centre”, by adding the words “and includes a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre” after the words “security screening”.

CLAUSE 8

Clause 8 of the Bill fails to include a provision empowering the Commissioner to promote, in as far as is possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.

The effect of the failure is that it leaves room for the importation of goods that would otherwise be locally available thereby failing to benefit the local economy.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 8 of the Bill be amended in subclause (2) by adding the following new paragraph immediately after paragraph (w)—



- (x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.

CLAUSE 18

Clause 18 of the Bill provides that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. The clause, when read together with clause 17 of the Bill, causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status. Furthermore, the manner in which the clause is drafted suggests that the revocation is only in relation to facts that emerge after recognition which is in contravention of the provisions of Article 1(F) of the 1951 United Nations Convention Relating to the Status of Refugees.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 18 of the Bill be amended by inserting the following new subclause immediately after subclause (4)—

- (4A) The provisions of section 17 (2), (3), (4) and (5) shall, with the necessary modifications, apply to the

revocation of refugee status by the Commissioner



CLAUSE 28

Clause 28 of the Bill, which provides for the rights and obligations of refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits. The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to protracted refugee situations.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 28 of the Bill be amended by adding the following new subclause immediately after subclause (7)—

(8) A person from a Partner State of the East African Community who has been recognised as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the



Establishment of the East African Community Common Market, and any other relevant written law.

CLAUSE 31

Clause 31 of the Bill, which provides that refugees shall reside in designated areas, authorises the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. The clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

RECOMMENDATION:

In view of the foregoing, I recommend that clauses 31 of the Bill be amended by adding the following new sub clause immediately after sub clause (4)—

(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.



Dated the 11th August....., 2021.

A handwritten signature in black ink, appearing to read "UJ Kenyatta". The signature is fluid and cursive, with a long horizontal line extending across the page.

UHURU KENYATTA,
President.

